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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 932

[Doc. No. AMS-FV-12-0076; FV13-932-1 IR]

Olives Grown in California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule decreases the assessment rate established for the California Olive Committee (Committee) for the 2013 and subsequent fiscal years from \$31.32 to \$21.16 per ton of assessable olives handled. The Committee locally administers the marketing order which regulates the handling of olives grown in California. Assessments upon olive handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal year began January 1 and ends December 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective [INSERT DATE 1 DAY AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments received by [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER], will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or Internet: <http://www.regulations.gov>. Comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Jerry L. Simmons, Marketing Specialist, or Rose Aguayo, Acting Regional Director, California Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (559) 487-5901, Fax: (559) 487-5906, or E-mail: Jerry.Simmons@ams.usda.gov or Rose.Aguayo@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Jeffrey Smutny, Marketing

Order and Agreement Division, Fruit and Vegetable Program,
AMS, USDA, 1400 Independence Avenue SW, STOP 0237,
Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax:
(202) 720-8938, or E-mail: Jeffrey.Smutny@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under
Marketing Agreement No. 148 and Order No. 932, both as
amended (7 CFR part 932), regulating the handling of olives
grown in California, hereinafter referred to as the "order."
The order is effective under the Agricultural Marketing
Agreement Act of 1937, as amended (7 U.S.C. 601-674),
hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this
rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order
12988, Civil Justice Reform. Under the marketing order now
in effect, California olive handlers are subject to
assessments. Funds to administer the order are derived from
such assessments. It is intended that the assessment rate
as issued herein will be applicable to all assessable olives
beginning on January 1, 2013, and continue until amended,
suspended, or terminated.

The Act provides that administrative proceedings must
be exhausted before parties may file suit in court. Under
section 608c(15)(A) of the Act, any handler subject to an

order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule decreases the assessment rate established for the Committee for the 2013 and subsequent fiscal years from \$31.32 to \$21.16 per ton of assessable olives.

The California olive marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of California olives. They are familiar with the Committee's needs and with the costs for goods and services in their local area. Thus, they are in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and

discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2012 and subsequent fiscal years, the Committee recommended, and USDA approved, an assessment rate of \$31.32 per ton of assessable olives that would continue in effect from fiscal year to fiscal year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on December 11, 2012, and unanimously recommended 2013 fiscal year expenditures of \$1,289,198 and an assessment rate of \$21.16 per ton of assessable olives. In comparison, last year's budgeted expenditures were \$1,197,291. The assessment rate of \$21.16 is \$10.16 lower than the rate currently in effect. The Committee recommended the lower assessment rate because the 2012-13 assessable olive receipts as reported by the California Agricultural Statistics Service (CASS) are 67,355 tons, which compares to 26,944 tons in 2011-12. Olives are an alternate-bearing crop, where crop size alternates between small and large crops, resulting in a higher 2012-13 volume crop and a lower 2011-12 volume crop.

The major expenditures recommended by the Committee for the 2013 fiscal year include \$333,800 for General Administration, \$637,380 for Marketing Programs, \$105,000 for Inspection Equipment Development, and \$213,018 for Research Programs. Budgeted expenses for these items in 2012 were \$333,500, \$480,000, \$50,000, and \$333,791, respectively.

The assessment rate recommended by the Committee is based upon the actual revenue necessary to meet the anticipated 2013 fiscal year expenses, given the actual olive tonnage received by handlers during the 2012-13 crop year, and taking into consideration the potential tonnage diverted by handlers into exempt uses. Actual assessable tonnage for the 2013 fiscal year is expected to be lower than the 2012-13 crop receipts of 67,355 tons reported by CASS because some olives may be diverted by handlers to uses that are exempt from marketing order requirements. Income derived from handler assessments will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum amount of one fiscal year's expenses permitted by the order.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA based upon a recommendation and

information submitted by the Committee or upon other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or from USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2013 budget and those for subsequent fiscal years will be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that

small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of primarily small entities acting on their own behalf.

There are approximately 1,000 producers of California olives in the production area and 2 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration as those having annual receipts less than \$750,000 and small agricultural service firms are defined as those whose annual receipts are less than \$7,000,000. (13 CFR 121.201)

Based upon information from the industry and CASS, the average grower price for 2012 was approximately \$1,150 per ton of assessable olives and total grower deliveries were 67,355 tons. Based on production, producer prices, and the total number of California olive producers, the average annual producer revenue is less than \$750,000. Thus, the majority of olive producers may be classified as small entities. Neither of the handlers may be classified as small entities.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 2013 and subsequent fiscal years from \$31.32 to \$21.16 per ton of

assessable olives, a decrease of \$10.16. The Committee unanimously recommended 2013 expenditures of \$1,289,198. The quantity of assessable California olives for the 2012-13 season is 67,355 tons. However, the quantity of olives actually assessed is expected to be slightly lower because some of the tonnage may be diverted by handlers to exempt outlets on which assessments are not paid. The \$21.16 rate should provide an assessment income adequate to meet this year's expenses.

The major expenditures recommended by the Committee for the 2013 year include \$333,800 for General Administration, \$637,380 for Marketing Programs, \$105,000 for Inspection Equipment Development, and \$213,018 for Research Programs. Budgeted expenses for these items in 2012 were \$333,500, \$480,000, \$50,000, and \$333,791, respectively.

The decrease in the assessment rate, despite the increase in the overall budget, is possible due to a larger 2012-13 crop. Funds in the reserve will be kept within the maximum amount of one fiscal year's expenses permitted by the order.

The Committee reviewed and unanimously recommended 2013 fiscal year expenditures of \$1,289,198, which included increases in Marketing Programs and Inspection Equipment Development, and a decrease in Research Programs. Prior to

arriving at this budget, the Committee considered information from various sources, such as the Executive Subcommittee, Marketing Subcommittee, Inspection Subcommittee, and the Research Subcommittee. Alternative expenditure levels were discussed by these groups, based upon the relative value of various projects to the olive industry. The assessment rate of \$21.16 per ton of assessable olives was derived by considering anticipated expenses, the volume of assessable olives, potentially exempt olives, and other pertinent factors.

A review of historical information and preliminary information indicates that the grower price for the 2012 fiscal year was approximately \$1,150.03 per ton for canning fruit and \$333.70 per ton for limited-use sizes, leaving the balance as unusable cull fruit. Approximately 86.6 percent of a ton of olives are canning fruit sizes and 7.7 percent are limited use sizes, leaving the balance as unusable cull fruit. Grower revenue on 67,355 total tons of canning and limited-use sizes would be \$68,811,276, given the current grower prices for those sizes. Therefore, the estimated assessment revenue for the 2013 fiscal year, as a percentage of total grower revenue, is expected to be approximately 1.9 percent.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the California olive industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the December 11, 2012, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this interim rule, including the regulatory and informational impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0178, Generic Vegetable Crops. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This action imposes no additional reporting or recordkeeping requirements on either small or large California olive handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at:
www.ams.usda.gov/MarketingOrdersSmallBusinessGuide. Any questions about the compliance guide should be sent to Jeffrey Smutny at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby

found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2013 fiscal year began on January 1, 2013, and the marketing order requires that the rate of assessment for each fiscal year apply to all assessable olives handled during such fiscal year; (2) this action decreases the assessment rate for assessable olives beginning with the 2013 fiscal year; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and, (4) this interim rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part

932 is amended as follows:

PART 932 - OLIVES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 932 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. Section 932.230 is revised to read as follows:

§ 932.230 Assessment rate.

On and after January 1, 2013, an assessment rate of \$21.16 per ton is established for California olives.

Dated: April 23, 2013

David R. Shipman
Administrator
Agricultural Marketing Service

[FR Doc. 2013-09998 Filed 04/26/2013 at 8:45 am; Publication Date: 04/29/2013]